No. 12325

United States

Court of Appeals

For the Ninth Circuit.

SAMUEL D. COLLINS,

Appellant,

vs.

CLINTON T. DUFFY, Warden at San Quentin Prison, California,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein printing in italic the two words between which the omission seems to occur.]

TABLE OF AUTHORITIES CITED

In Petition for Writ of Certiorari

Cases

INDEX PAGE

Table of Authorities Cited. (Continued.)

INDEX PAGE

CONSTITUTIONS

STATUTES

California Penal Code:

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In the United States District Court for the Northern District of California, Southern Division

Crim. No. 28983G

SAMUEL D. COLLINS,

Petitioner,

vs.

CLINTON T. DUFFY, Warden at San Quentin Prison, San Quentin, California,

Respondent and Defendant.

PETITION FOR WRIT OF CERTIORARI

Appeal from an order of the California State Supreme Court denying petition for Writ of Habeas Corpus.

Statement of Case

A petition for Writ of Habeas Corpus was presented to and denied without hearing by the State Court. Petition was numbered 4954 and the date of denial was March 16, 1949. The petitioner was convicted of two charges of abortion and one of murder of the 2d degree in the Superior Court of Los Angeles County, Hon. Clement D. Nye presiding, case no. 121566. Petitioner presents his case in pro per. This case has been appealed and affirmed. Petitioner feels aggrieved and is not satisfied with previous decisions, he is not satisfied that justice has been done in this case. Constitutional questions were not raised at the trial nor on the appeal. It now becomes the task of petitioner to

bring up these points of Civil Rights and liberties and Federal questions because of counsel's negligence on these points.

Petitioner contends that he was denied 'due process of law' thruout the trial in several instances. The mandate of the law as defined in the California Penal Code was not complied with. The mandate of the law as enumerated and defined in the California State Constitution was not complied with. The protection of our own State Constitution was denied the petitioner. Evidence was introduced in a manner that is contrary to the express provisions of the State Constitution as well as the Penal Code. Testimony of the alleged accomplices was accepted by the State Court as fact without the required corroboration demanded by the law.

Petitioner's conviction violated his Constitutional rights as expressed in the Fourth and Fifth Amendments to the United States Constitution. This conviction was also in violation of his Constitutional rights as expressed in the State Constitution, Art. 1 Sections 13 and 19. In the following pages these violations are listed and pointed out in sequence.

Opening Statement

Petitioner claims that the courts erred to the prejudice of the petitioner in receiving in evidence the testimony wherein is related a conversation allegedly heard over a dictograph. The prosecutor did not attempt to lay nor did the courts require a proper foundation for the introduction of this testimony. No recordings or transcriptions were made

though these records were vital in corroborating the claims of the police that a dictograph had actually been installed in the defendant's home. The conversation or testimony credited to the dictograph does not rise to the dignity of evidence but is mere supposition, speculation and guesswork. The trial court, to give it due credit, declined to permit the alleged voices to be named, but the prosecutor persisted, nevertheless, in naming or identifying these alleged voices, and, this improper identification was permitted to remain in the record. Officer Lynn Slaten had the gall to testify that he knew the petitioner very well and could identify his voice, when, as a matter of fact, he had only had a little conversation with him on two or three occasions.

None of the witnesses could say that he saw the persons named whose voices he claimed he heard. The recording instrument was not introduced into evidence nor was the receiver. It is the petitioner's contention that a fraud was perpetrated on the court, the jury and the petitioner. The fraud consists in the police claim that a dictograph was used to obtain evidence. Except for the mere word, uncorroborated, of the police, we have no physical evidence that a dictograph actually had been used in this case.

Section 653h, California Penal Code permits the use of a dictograph under certain prescribed conditions, i.e., that it must be installed by a regular, salaried police officer, expressly authorized thereto by the head of his office or by a District Attorney.

This provision of the law was not complied with.

If a dictograph had actually been installed it would be a violation of the Civil rights of the petitioner. It had the effect of compelling the defendant to be a witness against himself, an act expressly forbidden by the State Constitution, as well as the Fifth Amendment to the U. S. Constitution. The alleged installation of the dictograph required that forcible, stealthy entry be made into the petitioner's home; it deprived him of the right to be secure in his person, his house, papers and effects . . .

The Fourth Amendment says that this right shall not be violated . . . The California State Constitution also says the same thing . . . that this right shall not be violated. This alleged installation of a dictograph was made without a court order, search warrant or other judicial authority. The very existence in the code of Section 653h is a violation of the People's Civil liberties as expressed in the Fourteenth Amendment . . . 'no State shall make nor enforce a law which abridges the privileges or immunities of the citizens of the United States'. It is the right and privilege of the People to be secure in their homes against any unreasonable search and seizure or any other unlawful entry into their homes.

At the present time in the United States, the question of Civil Rights and liberties is a vital issue. These rights and liberties are being accorded to members of certain minority races, but the rights and liberties of the majority are being wilfully ignored in most States. Shall the State of Cali-

fornia be permitted to freely make and enforce laws which abridge the most elementary and fundamental rights of the People? Was the State created to serve the People or were the People created to serve the State and its elected or appointed officials? From time immemorial the most conspicuous feature of history has been the struggle between liberty and authority. Going further along into the transcript we note that the police freely and cheerfully admit that they searched and seized the personal and private property of the defendant. The testimony of state's witnesses and Everett Davis, a member of the search and raiding party, proves this contention. See reporter's transcript, page 254, lines 6 and 7.

The search of petitioner's home was made to justify the arrest and the arrest was made to justify the search. The arrest was made without a warrant but this action does not justify a search of the petitioner's home. In Chambers v. Florida, 309 U. S. 227-228 as well as Malinski v. New York, 324 U. S. 401-402-417, the U. S. Court ruled . . . 'the due process of law clause of the 14th Amendment just as that in the 5th Amendment was intended to guarantee procedural standards adequate and appropriate to protect at all times the people charged with or suspected of crime by those holding power and authority".

In May of 1948, the District Court of Appeal at Los Angeles, in ruling on a case brought by A. L. Wirin against the Los Angeles police, held that the Fourth U. S. Constitutional Amendment and the

California Constitution, Article 1, Section 19, prohibited unlawful search and seizure by the police or other persons in authority. It set forth in part: . . . these acts of the police were contrary to the provisions of the Fourth U. S. C. A. and the California State Constitution.

Here, petitioner contends that he was denied his right to 'due process of law'. He was denied the protection of his own State Constitution as well as the protection of the Federal Constitution and its Amendments. He contends that the Penal Code Section 653h is unconstitutional in its entirety; that, one policeman can not legally give permission to another policeman to violate the Civil rights and liberties of a citizen. No policeman can legally authorize another gendarme to break into, or make forcible entry into a citizen's home, either to make a search and seizure of the citizen's home and property or to compel him in any way to be a witness against himself. The police may not justify an arrest by a search nor a search by an arrest unless upon authority of a search warrant issued by a judge or court which has jurisdiction. These acts of the police are therefor unlawful and petitioner is justified in his grievance.

The testimony of the witnesses indicates that they were coached and rehearsed in their testimony; the testimony of the principal witness clearly shows manufactured evidence. Witness Delyi admits that he went to the home of petitioner at the direction of the police in the case. He denies that the police

coached him and told him what to say. Why deny that part of it after arranging for entrapment and manufacture of evidence? Why would the police rely on the ingenuity of the witness when the police are admitted experts in the fine art of entrapment, manufacture of evidence and the coaching of witnesses?

All three counts were tried together, counts 1 and 2 were prejudicial to count 3; count 3 prejudiced the other 2 counts. The police created the fiction that their principal witness, Delyi, was not an accomplice. It is evident from the transcript that this witness was both a principal as well as accessory before and after the fact. As such, his testimony is subject to independent corroboration in order to make it credible and admissible into evidence. His testimony was not corroborated within the meaning and mandate of section 1111, Penal code. The testimony of the women had no independent corroboration, therefore, it behooved the police to create fictional corroboration by this dictograph hoax. All the testimony relating to the dictograph should have been stricken.

Inasmuch as the evidence was taken illegally, through search and seizure without a warrant or judicial authority, none of it was admissible. In 1914 the U. S. Supreme Court established this rule: If letters and private documents can thus be seized and used in evidence . . . the protection of the Fourth Amendment might as well be stricken from the Constitution.

In Agnello v. U. S., 269 U. S. 20, 33, the court said; 'belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause'.

In Gouled v. United States, the U. S. Court said, "It would not be possible to add to the emphasis with which the framers of our Constitution and this Court (in Boyd v. U. S. 116 U. S. 616; in Weeks v. U. S., 232 U. S. 383, and in Silverthorne Lumber Co. v. U. S., 251 U. S. 385) have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two, (4th and 5th) Amendments . . . that such rights are declared to be indispensible to the full enjoyment of personal liberty, personal security, and private property; that they are to be regarded as the very essence of Constitutional liberty; . . . it has been repeatedly decided that these Amendments should receive a liberal construction so as to prevent the stealthy encroachment upon or a gradual depreciation of the rights secure by them, by imperceptible practice of the courts or by well intentioned but mistakenly over zealous executive officers.

In Michael Di Re v. U.S., No. 61 October term, 1947, the U.S. Supreme Court again affirmed the principle that evidence illegally obtained is not

admissible into evidence. Again, in Anne Johnson vs. U.S., No. 329 October term, 1947, the same court ruled against the admissibility of evidence illegally obtained. In Albert Lee v. Mississippi, the U.S. Court ruled, upholding Lee's contention that his civil rights had been abridged by the use of illegal evidence.

In Boyd v. U.S., 6 S.Ct. 524; 116 U.S. 616; 29 L.Ed. 746, we find . . . "when the thing forbidden in the 5th Amendment to the U.S. Constitution, namely, compelling a man to be a witness against himself, is the subject of search and seizure of his private papers, it is an unreasonable search and seizure within the meaning of the Fourth Amendment. The use of the dictograph and the evidence obtained by unlawful search and seizure in the petitioner's case had the effect of compelling him to be a witness against himself within the meaning of the Fourth and Fifth Amendments to the U.S. Constitution.

In Wisneiski v. U.S. 47 F. (2d) 825; the U.S. Court said, 'Invalid search is not made valid by what it brings to light'.

In Michael Di Re v. U.S., supra, the U.S. Court said, 'In law a search is either good or bad to begin with and does not change character from its success'.

The search and seizure in the petitioner's case was bad to begin with and was not made legal by its alleged success. The use of the dictograph was bad in that it was intended to compel the petitioner to be a witness against himself, in violation of his

right to 'due process of law, his Constitutional guarantee of civil liberties' under both the State and Federal Constitutions.

The State Supreme Court was petitioned as follows:

By an information of the District attorney of and for the County of Los Angeles, petitioner was charged, in three counts, with two crimes of abortion and one of murder, 2d degree.

Petitioner pleaded not guilty to all three charges; the three counts were tried together before the Superior Court of the State of California, in and for the County of Los Angeles, the jury returning verdicts of guilty on the two abortion counts, and the third count, guilty of murder in the second degree.

Thereafter, petitioner moved for a new trial, which was denied on March 21, 1946. Petitioner then appealed to the District Court of Appeals, Second District, Division three, which Court affirmed the judgments and orders denying the motion for new trial. (People vs. Collins 80 C.A. (2d) 526; 182 p. 2d. 585).

A petition for rehearing was denied on July 8, 1947 and the Supreme Court of the State of California denied a petition for hearing on July 22, 1947.

Petitioner now seeks a Writ of Habeas Corpus.

FACTS

Inasmuch as the testimony at the trial was lengthy and the facts pertinent to this petition will be dis-

cussed in detail infra, there follows a brief general statement of the evidence as presented at the trial. The first witness for the prosecution, Mrs. Crystal Louise Hawkins, testified that on July 3, 1945, while accompanied by Mrs. Helen Thompson, she went to the combination home and Office of Dr. S. D. Collins, your petitioner; that she told petitioner she was pregnant, but did not want the child; that he thereupon performed certain acts with instruments upon her private parts; that several days later she passed a partly formed fetus; that about a month later she visited the petitioner, at which time she had a certain conversation with him regarding Mrs. Helen Thompson.

The second witness for the prosecution was Mrs. Helen Thompson who testified she visited petitioner on June 29, 1945, in the same condition as Mrs. Hawkins and in general related a similar story.

The main prosecution witness regarding count three was John Michael Delyi. He testified that he and Margie F. Wilson, though not married, were living together as husband and wife; that in July of 1945, she became quite ill; that he took her to the petitioner's office-residence, where she was treated by petitioner; that several days later she seemed worse, so he took her again to see petitioner who looked at her and gave him some pills for her to take; that she several days later became progressively worse and died.

Officer Lynn Slaten of the Los Angeles Police Department testified that on August 4, 1945 he and other police officers were listening over an instru-

ment to a conversation allegedly taking place in petitioner's office-residence; that; over this instrument he heard a man's and woman's voice; that the microphones were in petitioner's office downstairs and in an upstairs sleeping room, although he did not install said microphones; that the hearing or receiving part of this instrument was in a house directly behind petitioner's; that the conversation was taken down by a shorthand reporter; which conversation Officer Slaten then proceeded to testify to.

Officer Slaten further testified that later the same day he picked up the petitioner in front of the Receiving hospital, by taking the keys out of petitioner's car and telling him to come along; that after taking Mrs. Hawkins, who had been with the petitioner, into the hospital, Officer Slaten took petitioner to his office-residence and there waited for the Deputy District Attorney, Ferguson, Captain Thad Brown, investigators Davis and Corsini, Detrich and Pinker of the Police department and Miss Adams, a short hand reporter.

They all entered petitioner's office-residence and proceeded to the treatment room where photographs were taken. Mr. Davis gathered up instruments. as well as bottles of medicine and other medical appliances; that he; Slaten removed a card index file of the petitioner's.

Following Officer Slaten as witnesses were Paul C. Miller, custodian of medical records at the Los Angeles County General Hospital, who testified to the hospital records of Mrs. Hawkins and Mrs.

Thompson; Dr. George Nador, who had examined Mrs. Hawkins and concluded an abortion had been performed on her; Dr. Wilber S. Hill, who had examined Mrs. Thompson, who testified that he diagnosed her case as an incomplete abortion, and Officer Everett P. Davis, who testified that he took several catheters from the petitioner's office-residence while he and the other officers were there.

Lorna Adams, law stenographer of the District Attorney, testified that she took in shorthand a conversation purportedly heard *the* the earphones of a dictograph, and she read the complete transcript she had taken down. This was the same conversation testified to by Officer Slaten, allegedly between petitioner and Mrs. Hawkins.

Final witnesses for the prosecution were Thad Brown, Deputy Chief of Police, whose testimony will be quoted at length, infra, and Dr. Frank R. Webb, the latter who performed an autopsy on Margie Wilson and testified that she died of acute peritonitis, there also being indications of pregnancy; he was then given most of the instruments and medicines taken from the petitioner's office-residence and identified them and explained how each was used.

The petition should be granted for the following reasons:

1. A Writ of Habeas Corpus can properly be issued under the facts herein.

2. The evidence regarding the conversations allegedly heard over the dictograph was not admissible, because it violates the constitutional rights of the petitioner.

3. The corroboration was insufficient because Crystal Hawkins, Helen Thompson and John Delvi were accomplices and their testimony can not corroborate each other.

4. The medical instruments, medical appliances and the medicines should not have been allowed in evidence because the defendant was himself compelled to produce them.

It is petitioner's position that there are grave issues of civil rights concerned in this proceeding regarding the alleged crime, which said issues of civil rights have not been ruled upon to date.

1. A Writ of Habeas Corpus can properly be issued under the facts herein.

The recent case of In Re Wallace, 4 C. (2d) 933 (1944), discusses Habeus Corpus and states at page 938:

> "A violation of the defendant's constitutional rights during the trial leading to his conviction is ground for attack on the judgment in a Habeas Corpus proceeding if the petitioner has no other adequate remedy to test the constitutionality of the proceeding resulting in his conviction. (Citation of authorities)"

Petitioner has exhausted his rights of appeal, as

shown supra, and here seeks a Writ of Habeas Corpus upon the ground that his constitutional rights were violated at the trial which led to his conviction.

2. The evidence regarding the conversation purportedly heard over the dictograph was not admissible, because it violates constitutional rights of petitioner.

Lynn Slaten, police officer of the Los Angeles Police Force, was permitted to testify (commencing R.T. 171/7) as to certain conversations he allegedly heard on the 4th day of August, 1945. On voir dire examination, it was established that Officer Slaten was not present in the room where said conversations took place, but that he heard same over an instrument. There was absolutely no foundation laid for this evidence.

The voir dire examinaton of Officer Slaten brought out these further facts:

That the alleged conversations were heard by Slaten at 519 South Hoover Street, (a building admittedly right then in the process of being demolished and moved) (and which it was not shown whether or not there was electricity to operate a dictograph). No showing was even made as to the existence of this building at that address or that it had ever, in fact existed. At that address is a vacant lot, which is said to be directly behind petitioner's office-residence; that there was a recording device for recording conversations heard over this instrument; that no records were made, however; that the

alleged conversations were taken down in shorthand by Lorna Adams, a shorthand reporter from the District Attorney's office; that Officer Lynn Slaten made no personal notes of the conversations; that Mr. Slaten did not install the equipment either in the premises in which he was supposedly listening; that he did not witness the installation of said equipment in the residence of the petitioner.

Counsel for petitioner, at the conclusion of the voir dire examination (R.T. 180/14-181/9) made a lengthy objection to the introduction in evidence of any conversation allegedly heard over this dictograph on the ground, among others, that there was no evidence as to what manner and under what circumstances the dictograph was installed, or the kind and character of the equipment that was used. This objection was over-ruled.

Thereafter, Officer Slaten was allowed to testify as to the complete conversations he allegedly overheard over the dictograph, the microphones of which dictograph were allegedly in two rooms of the office-residence of the petitioner. He testified from the transcript made by the shorthand reporter Lorna Adams, who it was had taken down parts of said alleged conversations.

Basically the same story that was related by Officer Slaten was related by Lorna Adams, the shorthand reporter, when she testified later on in the trial (R.T. 268-16—277-20). Counsel for petitioner, at the conclusion of Miss Adams testimony, made a motion to strike same, which motion was denied by the court.

Article 1, Section 19 of the State Constitution of California reads as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized".

This section of the California Constitution is identical with the Fourth Amendment to the Constiution of the United States, and sets forth a fundamental principle that the founders of this country and this State deemed necessary for the protection of its citizens.

Article 1, section 13 of the Constitution of the State of California reads as follows:

> ". . . No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; . . ."

This section is identical with the Fifth Amendment to the Constitution of the United States.

The rights guaranteed individuals by the above two articles of the California Constitution and the Amendments to the Constitution of the United States are the backbone of Civil rights as handed

down to us from the English law. Mr. Justice Bradley, in his famous opinion in the case of Boyd v. the United States, 116 U.S. 616, (6 Supreme Court 524), wherein he discussed at length the decision by Lord Camden in the case of Entick v. Carrington, 19 Howell, St.Tr., 1029, points out that the basis of the Fourth Amendment to the Constitution was really founded upon the issuing of writs of assistance to the revenue officers in the colonies by the government of England. Justice Bradley goes on to state that these writs of assistance to revenue officers empowered them, in their discretion, to search suspected places for smuggled goods, which writs were pronounced by James Otis to be the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book, since they placed the liberty of every man in the hands of every petty officer. It was undoubtedly these writs of assistance that were in the minds of the men who achieved our independence and who established the Constitution of the United States.

It is apparent from the articles and the amendments quoted above that the right of a person to be secure in his home is a cherished right that has been recognized since the founding of our country.

Have we surrendered these rights to our civil servants, the police and other executive officers, or have these civil servants arbitrarily deprived us of these cherished rights? That is the question before this court today. Human liberty is in danger when

citizens must go into court to prove that the Bill of Rights liberties are theirs to practice.

Wire tapping, the use of dictographs, illegal search and seizure; these practices, gentlemen, are the way of life in a police state.

The supremacy of the law commands that the process of governmental administration, executive, administrative and judicial be dominated by the law and not by man's arbitrary caprice.

Petitioner contends that it was not the sort of trial guaranteed to him by the Bill of Rights. The personal safety of each and every one of us depends upon the preservation of the inviolability of due legal process uninfluenced by any sort of pressure, official or unofficial.

It is more important to preserve the integrity of the administration of criminal justice than that any particular defendant should be acquitted or convicted.

With this thought in mind, let us examine the use of the dictograph or dictaphone. Strangely enough, there are relatively few cases in California discussing the admissibility of evidence of conversations heard by the use of such equipment. Two cases in which the evidence is held admissible are People v. Schultz, 18 Cal. App. (2d) 485, and People v. Pustau, 39 Cal. App. (2d) 407.

The Pustau case was cited in the petitioner's case in the District Court of Appeals. In neither of these cases is there any discussion from a Constitutional standpoint, of the admissibility of evidence received

the use of a dictaphone, both cases seemingly assuming that there is no civil rights problem concerned therein. The Schultz case, at page 488, commencing at line 16, dismisses the problem in the following language:

> "There are other ways of identifying voices than by seeing the party who is talking, and a person is not obliged to hear and catch all of the conversation in order to relate the part of it which he does hear and catch".

There was no citation of authority for this statement.

Seemingly, the only other recent California case discussing the use of a dictaphone or a dictograph is the Pustau case, which, after quoting the above statement from the Schultz case, goes on to state at page 414, commencing at line 15, as follows:

> "Further, appellant readily admitted his presence at the conference in question, as did the other two participants therein, and the shorthand reporter testified he was familiar with the voice of appellant. Manifestly, no prejudice occurred to appellant by reason of the trial court's ruling in this regard"

It seems rather strange that the appellate courts of the State of California could pass over so lightly fundamental rights protected by both the State and Federal Constitutions. By that we do not mean to imply that other states of the United States and

even the Supreme Court of the United States have not ruled similarly. However, petitioner makes this point, that even admitting for the moment that evidence received over a dictograph may, in some cases, be admissible, the subject should be thoroughly discussed by the courts and in said discussions should set up affirmatively what steps should be taken before the evidence becomes admissible.

Probably the leading case in the Supreme Court of the United States concerning this type of evidence, that is, evidence obtained by mechanical means such as over wires or with amplifying devices, is the case of Goldman v. United States, 316 U.S. 129, 86 Law Ed. 1322 (1940). In this case, federal agents in the process of entrapping the defendants for conspiracy to violate the Bankruptcy Act, without a search warrant planted a dictograph in the office of one of the defendants. However, when the time came to listen to the conversation of the defendants in that office, the dictograph would not function. The Government officers had with them another listening device known as a detectaphone, a device having a receiver so delicate that when placed against a wall, it will pick up the sound waves originating in another room, and by means of an amplification system, enable the one with the device to hear what is going on in the other room.

The Court held that the use of the detectaphone and the information gained by its use was not made illegal by the trespass or unlawful entry in install-

ing the dictaphone. The court went on to hold that the use of the detectaphone by the government agents was not a violation of the Fourth Amendment, relying on the case of Olmstead v. the United States, 277 U.S. 438, 72 Law Ed. 944, the case which ruled in a 5 to 4 decision in 1927 that evidence received by wire tapping was admissible.

The Goldman case was a 5 to 3 decision with two dissenting opinions. Mr. Justice Murphy in his dissenting opinion stated in part as follows:

> "There was no physical entry in this case. But the search of one's home or office no longer requires physical entry, for science has brought forth far more effective devices for the invasion of a person's privacy than the direct and obvious methods of oppression which were detested by our forebears and which inspired the Fourth Amendment. Surely, the spirit motivating the framers of the Amendment would have abhorred these devices no less. Physical entry may be wholly immaterial. Whether the search of private quarters is accomplished by placing on the outer walls of the sanctum a detectaphone that transmits to the outside listener the intimate details of a private conversation, or by new methods of photography that penetrate walls or overcome distances, the privacy of the citizen is equally invaded by agents of the government, and intimate, personal matters are laid bare to view.
>
> Such invasions of privacy, unless they are

> authorized by a warrant issued in a manner and form prescribed by the Amendment or otherwise conducted under adequate safeguards defined by statute, are at one with the evils which have heretofore been held to be within the Fourth Amendment and equally call for remedial action."

Petitioner takes the position of Mr. Justice Murphy in this regard and earnestly puts forth the latter's argument. (Petitioner believes that since 1927 the use of such devices has been outlawed.)

If such devices as the detectaphone and the dictograph are to be allowed, it would seem that at the very least the officers using such devices should first obtain warrants issued by a Court which has first weighed the evidence as to the probability of a crime being committed, as in the case of search and seizure and search warrants. Is that too much to ask of the law?

The rights to be secure in home and office are, probably, the most important of all rights possessed by the individual. It seems that if these rights are going to be abridged in any manner, that there should at least be safeguards, such as first presenting the facts before a judge or tribunal of some kind and obtaining a warrant, before the intimate, personal matters of individuals are made open season to police officers.

It is realized that although the Fourth Amendment of the Constitution of the United States and similarly Article 1, Section 19 of the Constitution

of the State of California prohibit unreasonable searches and seizures, that the California courts, contrary to the practice of the Federal courts, adhere to the rule that even though evidence is obtained through an illegal search and seizure it is nonetheless admissible in evidence. (People v. Gonzales, 20 Cal. (2d) 165). It would seem to follow then that even if the acts of the officers in planting a microphone or dictograph, are unlawful and a trespass, the evidence so obtained would still be admissible. Although there are strong arguments against such being the rule, it seems that California is definitely committed to so holding.

However, even admitting that, it should not follow that police officers can take the witness stand and testify that they heard an alleged conversation, without any foundation first being laid showing who installed the equipment, when it was installed, and under whose authority. Such a showing was not made in the petitioner's case. Therefore, petitioner feels justified in his claim that a fraud was perpetrated by the police. The possibility of perjured testimony is readily apparent where the above foundation is not set forth. How can the law so destroy the basic constitutional rights of individuals without first requiring such a showing?

A direct connection between lawless administration of justice and the incidence of crime was reported by Robert Daru recently. Mr. Daru is co-counsel of the New York County Criminal Courts Committee on unlawful searches and seiz-

ures of the Bar Association. Reporting on a cross-country trip, Mr. Daru declared States with rigid codes for police investigations produced lower crime rates than States where "any evidence, no matter how obtained, is admissible in court." Sixteen States follow Federal procedures which bar evidence illegally obtained. Mr. Daru further reports,

"The sixteen States are doing better generally in handling the crime problem."

"A community that tolerates a lawless administration of justice is encouraging a form of lawlessness than can only lead to more lawlessness."

Not wanting to be trite but desiring to impress this court with the dangers of accepting merely the word of police officers that a dictaphone was installed and used, we have only to look to the farcical trials in the Hitler Germany State of yesterday and in Russia today.

It was probably with this in mind that Justice Thomas P. White in the recent case of Ware vs. Dunn, (1947) 80 C.A. (2d) 936, a search and seizure case involving the Constitutional issues here involved, stated:

> "From time immemorial the most conspicuous feature of history has been the struggle between liberty and authority. Today, as in ages past, we are not without tragic proof that the exacted power of some governments to ignore the inalienable right of the individual and to resort to lawless enforcement of the law is the hand maid of tyranny.

> No higher duty, nor solemn responsibility, rests upon the courts than to maintain the constitutional and statutory shields planned and inscribed to preserve the liberty under law and protect each individual from oppression and wrong, from whatever source it may emanate." (Emphasis added.)

Even assuming that the use of such devices is Constitutional, which petitioner claims to the contrary, and even assuming that the use of such devices illegally would not prevent the evidence so obtained from being used in a court of law, there was no real evidence at the trial that showed a dictograph had actually been installed, other than the testimony of members of the police force, who were not the ones who actually installed the equipment, nor any evidence of any attempt at following the statute which gives the police officers authority in California to install such devices.

Section 653-h of the Penal Code of the State of California reads as follows:

> "Any person who, without consent of the owner, lessee, or occupant, installs or attempts to install or use a dictograph in any house, room, apartment, tenement, office, shop, warehouse, store, mill barn, stable, or other building, tent, vessel, railroad car, vehicle, mine or any underground portion thereof, is guilty of a misdemeanor; provided, that nothing herein shall prevent the use and installation of dicto-

graphs by a regular, salaried peace officer expressly authorized thereto by the head of his office or department or by a District Attorney, when such use and installation are necessary in the performance of their duties in detecting crime and in the apprehension of criminals."

It is petitioner's position that this section is unconstitutional and in violation of Article 1, Section 19 of the State Constitution and also the Fourth Amendment to the Federal Constitution, in that it authorizes police officers to install dictographs merely upon the authorization of a department head in the police department or of a District Attorney. If anything is to remain of the Fourth Amendment of the United States Constitution and of Article 1, Section 19 of the State Constitution, it would seem that at the very minimum it would be necessary, before installing a dictograph, that a warrant of some kind should first be obtained from a judge or court. When the statutory law gets to the state of all owing one police officer to give another police officer the authority to break into a man's home or his place of business and install dictographs or dictaphones, the rights of the individual are at an end, and the Fourth Amendment of the Federal Constitution and of Article 1, section 19 of the California State Constitution are merely illusory verbiage.

In the very recent case of McDonald v. The United States, October term 1948 of the U. S. Supreme Court, reported in Law edition Advance Opinions, Vol. 93, No. 4 at page 144, a case involv-

ing illegal search and seizure, the majority opinion had this to say at page 147:

> "We are not dealing with formalities. The presence of a search warrant serves a high function. Except in some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was not done to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade the privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.
>
> Power is a heady thing; and history shows that the police acting on their own can not be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home.
>
> We cannot be true to that Constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the Constitutional mandate that the exigencies of the situation made that course imperative." (Emphasis added.)

Under that opinion it would seem that Section 653-h of the Penal Code of the State of California is unconstitutional in that it does not impose the magistrate between the police officer and the private individual.

However, even assuming the section unconstitutional, and of course assuming, as will be shown infra, that the trespass upon the premises of petitioner was unauthorized, it would still be the rule that evidence illegally obtained is admissible in California. However, let us examine the facts of the present case regarding the evidence allegedly heard on the dictograph. The record clearly shows that no attempt was made, when this evidence was offered, that is, the evidence regarding the dictograph, to conform to the above section of the California Penal Code.

The persons who installed the dictograph were not present in court, and gave no testimony regarding the installation. In fact, there was practically no evidence at all introduced by anyone as to how the installation was made, where it was made, and when it was made.

In addition, there were no dictograph records presented at the trial nor were there any records actually made of the alleged conversations that were introduced into evidence. There was no testimony by the head of a police office or department, or by a District Attorney, stating that it had authorized that said dictograph be installed in the office-residence of the petitioner.

Is it not strange that although Officer Slaten testified that one or two test records were started when the apparatus was first installed, which was a period of several days before the actual conversation testified to in court, that even these trial

records were not produced in court to show that there actually had been an installation of this dictograph or dictaphone equipment? Officer Slaten testified that the reason dictaphone records were not made of the conversations was that the machine was not functioning properly and the records could not be cut satisfactorily.

With 3 to 4 days to get this mechanism working, does it not seem odd that the Police Department did not see to it that the equipment was repaired and records made rather than relying on a shorthand reporter? How far this testimony is from the positive mandate of the Constitution of the State of California and of the Constitution of the United States of America.

Petitioner earnestly contends that the basic foundation for the reception of this evidence was never in fact laid and that the evidence should never have been admitted.

3. The Corroboration Was Insufficient Because Crystal Hawkins, Helen Thompson and John Delyi Were Accomplices and Their Testimony Cannot Corroborate Each Other.

Section 1111 of the Penal Code of the State of California regarding the testimony of an accomplice reads as follows:

> "A conviction cannot be had upon the testimony of an accomplice unless it shall be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not

sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given."

Section 1108 of the same Code reads as follows:

"Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of 18 years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence."

Section 274 of the same Code reads as follows:

"Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the State Prison not less than two nor more than five years."

The recent case of People v. Wilson (1944) 25 Cal. (2d) 341, was concerned with the same problem

in general as is presented in this petition. The Wilson case sets out the principle, on page 346 of said opinion commencing at line 26. That where one plays an active part in the transaction, there an abortion, he is subject to prosecution for the offense with which the defendant was charged, and is an accomplice within the definition of Section 1111 of the Penal Code. There the court said that the fact that Mr. Anderson, the husband of the woman upon whom the abortion was performed, had paid the fee for the abortion and had had a conversation with the defendant in which he assured her that the money was ready, and where he inquired how long he would have to wait, and where he stated that he knew the purpose of his wife's appointment with the defendant, that by these acts he had played an active part in the transaction and was therefore an accomplice within Section 1111 of the Penal Code.

Using the rule of the Wilson case and applying it to the facts of the testimony of the witnesses at the trial of the petitioner, it is clear that Crystal Louise Hawkins, Helen Thompson and John Michael Delyi were all accomplices under the definition of Section 1111 of the Penal Code and all subject to prosecution for violation of Section 274 of the Penal Code.

The testimony of Crystal Louise Hawkins, the first witness called by the prosecution, says she was living with Helen Thompson prior to going to the office-residence of the petitioner. Helen Thomp-

son being another complaining witness for the prosecution. (R.T. 3/4) Mrs. Hawkins further testified that she had an appointment with the petitioner (R.T. 4/10). She further testified that she had never been to see him before and that she had not known of the petitioner until a few days prior thereto. She stated that she had talked to someone regarding the petitioner, and that someone had made the appointment. It is apparent from the testimony of Mrs. Hawkins that she is referring to Mrs. Thompson, who later accompanied her on her first visit to the petitioner. She further testified that she then went to the office-residence of petitioner with Mrs. Thompson (R.T. 5/21) and that Mrs. Thompson introduced her to the petitioner (R.T.6/24). The evidence further shows that after certain acts alleged to have been done by the petitioner at this time, that Mrs. Hawkins met Mrs. Thompson and they left the office-residence of the petitioner together.

That, further, on returning to petitioner's office-residence, she told petitioner that Helen Thompson was in the hospital, meaning Mrs. Helen Thompson (R.T. 39/9).

The second witness for the prosecution, Helen Thompson, testified that she lived with Crystal Louise Hawkins (R.T. 60/7): that she visited the petitioner on the 29th day of June, 1945, and again on July 3, 1945 (R.T. 60/17-21); that after testifying about certain acts performed by the petitioner, that several days later at her home in the presence

of Mrs. Hawkins she passed a fetus (R.T. 77/23-25): that on July 3rd she accompanied Mrs. Hawkins to the office-residence of petitioner (R.T. 79/12); that during the time she was in the hospital she was in the same ward as Mrs. Hawkins. (R.T. 101-21).

In the light of the above facts, it is apparent from the rule of the Wilson case that both Mrs. Hawkins and Mrs. Thompson were accomplices of the defendant of the crime or crimes he is alleged to have committed. Certainly they each played an active part in the transaction involving the other with the defendant, such an active part as would make them accomplices within the definition of Section 1111 of the Penal Code, from which it would follow that other corroboration would be necessary in order to convict the petitioner. Petitioner believes that on the evidence properly admissible in this case, there was not sufficient corroboration.

With the evidence as to the dictaphone conversation ruled out, as we believe it properly should have been, and with the photographs of defendant's office-residence, together with the instruments and medicines seized there ruled out, which we shall show infra also to be inadmissible, that there was not sufficient corroboration to convict the petitioner of the alleged crimes.

The third witness for the prosecution, John Delyi, testified that he had lived together with the decedent, Margie F. Wilson, five or six weeks prior to her death on July 27th, 1945 (R.T. 115/4-11): that

he first met petitioner on the 24th day of July, 1945 (R.T. 116-9); that the occasion for going to the petitioner's residence was that Margie was very ill (R.T. 116/24-117-3); that he took Margie Wilson to the petitioner's residence; that he rang the door bell and when a lady came to the door asked for the petitioner and that the petitioner came to the door, (R.T. 117); that he told petitioner that Margie was very ill and that he, Delyi, then went back to his car and drove in the driveway at the right side of the house (R.T. 118/5-8); that he assisted the petitioner in helping Margie into the office of the petitioner, by practically carrying Margie in. (R.T. 118/15-20); that he waited for 20 or 25 minutes (R.T. 119-15); that Margie had been very sick since July 22, 1945 (R.T. 121/6); that on the 25th day of July he again took Margie back to the office-residence of petitioner (R.T. 123/16-24); that he went up and talked to petitioner and told him that she was very sick and that he would have to do something about it and that petitioner went into his office and gave him some pills which he put into an envelope (R.T. 124/6-9); that he, Delyi, gave Margie these pills (R.T. 129-10); that he had slept with Margie on the evening of July 22, 1945 (R.T. 136-19); that he also tried to give her some tomato juice (R.T. 130-15); that on July 26, 1945 had the following conversation with petitioner on the telephone:

> "I asked him to come out to the house because Margie was very ill. He said, what is the

address? I told him that the address was 2143 West View, that the house stood near Washington Blvd., and that the porch light would be lit on the house, and that he could not miss the house. At that moment the landlady interrupted me and said, Margie died, and I told Collins Margie died. He said, are you sure? I said yes, the landlady just told me, and I believe that he hesitated over the telephone for a moment, and then he asked the address again, and I again repeated the address, and I said, come out. I said, I will call the police. I have to have someone here. I can't take care of it myself. With that he said O.K., I will be out, and hung up." (R.T. 146-1-13)

It would seem that the above mentioned testimony of Delyi clearly would bring him within the rule enunciated in the Wilson Case. It would be hard to see how anyone could play a more active part in the transaction than did Delyi in regard to the alleged criminal act performed by petitioner upon Margie Wilson.

He was therefor an accomplice within the definition of Section 1111 of the Penal Code and his testimony required corroboration. It is readily apparent from the record that there is practically no corroboration to any of the testimony given by Delyi. To use what little corroborating evidence that there was presented in regard to Mrs. Hawkins and Mrs. Thompson would be highly prejudicial to the defendant.

There must be corroboration of Delyi's testimony and, it was entirely lacking. It is petitioner's position that this evidence of Mr. Delyi was not corroborated, as the testimony of an accomplice should be, and that there was absolutely no evidence supporting the third count of which petitioner was convicted, that of second degree murder.

In summary then, it is apparent that Crystal Louise Hawkins and Helen Thompson each actively participated in the abortion of the other and thus clearly brought themselves within Section 274 of the Penal Code. Under Penal Code Section 1111, their testimony required sufficient corroboration, for to use the statement of Mr. Justice Schauer in his dissenting opinion in the Wilson case:

> "The experience and wisdom of mankind, particularly of those dealing with judicial trials, accumulated through many generations, have brought the conclusion that 'evidence of an accomplice, coming from a tainted source, the witness being, first, an infamous man, from his own confession of guilt, and second, a man usually testifying in the hope of favor or expectation of immunity, was not entitled to the same consideration as the evidence of a clean man.' " (People v. Coffey (1911) 161 Cal. 433, 438 (119 P. 901), 39 L.R.A.N.S. 704.)

In complete accord with that statement the legislature of California has laid down the rule that a "conviction can not be had upon the testimony of an accomplice unless it is corroborated by such

other evidence as shall tend to connect the defendant with the commission of the offense; and that the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. (Penal Code Sec. 1111)

Clearly, too, the testimony of Delyi made him an accomplice, and as such his testimony under Section 1111 of the Penal Code required corroboration.

Suffice it to say here that it is obvious from the record that there is not sufficient corroboration of Delyi's testimony, in fact, there is none whatsoever on any of the major details regarding the alleged crime to have been committed on Margie Wilson. The testimony of a man who has lived with a woman, not being married to her, probably caused her to become pregnant, and to have gone through the situation that he alleges he went through in regard to her, certainly should have been looked upon with caution and suspicion. He could hardly have played a more active part in the transaction than if he had tried to do so.

4. The Medical Instruments, Medical Appliances and the Medicines Should Not Have Been Allowed in Evidence Because the Defendant Was Himself Compelled to Produce Them.

Although we have seen that the rule in California admits evidence that has been obtained through an illegal search and seizure, there is a well recognized distinction regarding the actual obtaining of the evidence. This distinction is brought out in the case of People v. LeDoux (1909) 155 Cal. 535, at page 548 the Court stated as follows:

"The Court, upon the mere question of admitting or rejecting evidence, will not take cognizance of the mode of its production, unless it be shown that the defendant has been compelled himself to give or produce it. (Emphasis added.)

The record in the present case shows that the petitioner was picked up at the receiving hospital in Los Angeles, and when picked up at said hospital, the keys of his car were taken by Officer Slaten; that he was then driven to his office-residence and there waited until the Deputy Chief of Police Brown, the District Attorney and several other police officers arrived; that the officers thereupon unlocked the door and took petitioner into his office-residence, took him all through the house, took photographs, seized instruments and medicines, and other medical equipment, and while there, elicited from him a statement, which however was not admitted into evidence. All this without a search warrant and not while actually making an arrest.

It is apparent from the transcript which reads as follows: (R.T. 288/12-17 and 289/1-2);

Testimony of Thad Brown, Deputy Chief of Police of the Los Angeles Police Department:

"Q. Do you recollect how you got into the house?

"A. Yes, when we arrived at the house on Commonwealth Ave., Slaten and Detrich and the Doctor were seated in a car in front of the house. Ferguson and myself and the stenog-

> rapher, I believe—no, she was already there I am sorry. Ferguson and myself walked up to the door; the entire party did. Slaten said to Dr. Collins, Sam give me your key. Dr. Collins reached into his pocket and pulled out a door key, and Slaten unlocked the front door and we all went inside."

that the petitioner was himself compelled to produce all the evidence obtained by the police officers in this search of his house. He was taken at the Receiving Hospital on Georgia Street, he was brought by the police officers to his office-residence, he was there requested to give up the key to his house, which he did, and thereupon the police let themselves in. It is submitted that under the ruling of the LeDoux case cited above, that all of the evidence so obtained was not admissible. This includes all the photographs introduced in evidence of the premises of the petitioner, and all of the medical instruments and other medical appliances identified by various witnesses, including Dr. Frank R. Webb for the prosecution, most of which instruments were not identified as having been used in the alleged offenses charged.

CONCLUSION

Petitioner respectfully submits that this is a proper proceeding and that a Writ of Habeas Corpus should issue for the reason that his Constitutional rights were violated at the trial leading to his conviction.

The rights set out in the Fourth Amendment of

the United States Constitution and Article 1, Section 19, of the State Constitution are for the protection of the guilty as well as the innocent, for who can properly segregate the guilty from the innocent when our fundamental Constitutional rights are violated?

To encourage police officers and District Attorneys to flaunt the Constitutional requisites is to court eventual disaster. The Courts must preserve our Constitutional rights, not to shield the guilty, but to protect the innocent.

As Mr. Justice Murphy states in his dissent in Goldman v. United States, cited supra:

> "The circumstance that petitioners were obviously guilty of gross fraud is immaterial. The Amendment provides no exception in its guarantee of protection. Its great purpose was to protect the citizens against oppressive tactics. Its benefits are illusory indeed if they are denied to persons who have been convicted with evidence gathered by the very means which the Amendment forbids. Cf. Weeks v. United States, 232 U.S. 383, 58 L.Ed. 652, 34 S.Ct. 341, LRA 1915 B. 834 Ann Cas 1915 C 1177. Its protecting arm extends to all alike, worthy and unworthy, without distinction. Rights intended to protect all must be extended to all, lest they so fall into desuetude in the court of denying them to the worst of men as to afford no aid to the best of men in time of need.
>
> "The benefits that accrue from this and other articles of the Bill of Rights are characteristic

of democratic rule. They are among the amenities that distinguish a free society from one in which the rights and comforts of the individual are wholly subordinated to the interests of the State. We cherish and uphold them as necessary checks on the authority of Government. They provide a standard of official conduct which the Courts must enforce.

"At a time when the Nation is called upon to give freely of life and treasure to defend and preserve the institutions of democracy and freedom, we should not permit any of the essentials of freedom to lose vitality through legal interpretations that are restrictive and inadequate for the period in which we live."

/s/ SAMUEL D. COLLINS,
Petitioner.

Wherefore, the petitioner respectfully prays the Honorable Court to grant him relief from what he contends to be unfair and unjust judgments and grant him the relief that he seeks, A Writ of Certiorari to the State Supreme Court.

/s/ SAMUEL D. COLLINS,
Petitioner.

State of California,
Marin County,
San Quentin, California—ss.

Samuel D. Collins, being first duly sworn, deposes and says: that he is the petitioner in the above entitled action; that the facts in the above

entitled action are within his personal knowledge; that he has read the allegations in support of the foregoing petition and knows the contents thereof, and the same are true of his own knowledge, except as to those matters which are therein stated on his information or belief; and as to those matters he believes it to be true.

/s/ SAMUEL D. COLLINS,
Petitioner.

Subscribed and sworn to before me this 14th day of June, 1949.

[Seal] /s/ JOHN DOUGLAS SHORT,
Notary Public in and for said County.

My Commission Expires September 3, 1950.

[Endorsed]: Filed June 29, 1949.

In the United States District Court for the Northern District of California, Southern Division

No. 28983-G

SAMUEL D. COLLINS,

Petitioner,

vs.

CLINTON T. DUFFY, Warden at San Quentin Prison, California,

Respondent.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

The claims presented by the petitioner in this petition for a writ of habeas corpus were considered

and ruled upon by the California District Court of Appeal, on petitioner's appeal from the judgments of conviction entered by the Superior Court, People v. Collins, 80 Cal. App. 2d 526, 182 P. 2d 585. A petition for rehearing in that court was denied, as was a petition for a hearing by the California Supreme Court. Petitioner alleges that he unsuccessfully sought a writ of habeas corpus upon the grounds here asserted from the California Supreme Court. It does not appear that petitioner has sought review by the United States Supreme Court. Hence he has not exhausted his remedies under State law. (Ex parte Hawk, 321 U.S. 114.) For this reason and because no good reason is shown for interposition by a United States District Court, the petition is denied and the proceeding is dismissed.

Dated: July 7, 1949.

/s/ LOUIS GOODMAN,
U.S. District Judge.

[Endorsed]: Filed July 7, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Petitioner in the above entitled action hereby gives notice that he is appealing from an order of

the United States District Court, Judge Goodman presiding, denying his petition for Writ of Habeas Corpus.

Dated July 13, 1949.

/s/ SAMUEL D. COLLINS,
Petitioner.

[Endorsed]: Filed July 15, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, to-wit:

Petition for Writ of Habeas Corpus, Order Denying Petition for Writ of Habeas Corpus, Notice of Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 3rd day of August, A.D. 1949.

C. W. CALBREATH,
Clerk,

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12325. United States Court of Appeals for the Ninth Circuit. Samuel D. Collins, Appellant, vs. Clinton T. Duffy, Warden of San Quentin Prison, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 11, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.